U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: EAC 03 176 50340 Office: VERMONT SERVICE CENTER Date: SEP 21 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was a postdoctoral fellow conducting cancer research at the Wistar Institute, Philadelphia, Pennsylvania. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a letter and examples of her published work. There is no indication that counsel participated in the preparation or filing of the appeal.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the

> [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

An unsigned introductory statement indicates that the petitioner "currently conducts cancer research, studying the role of CD44 in tumor development and tumor metastasis." The statement also indicates that the petitioner "has a demonstrable track record of achievement. She has spent the years since 1980 involved in the pursuit of science." We note that the petitioner was born in 1972, and therefore she was eight years old in 1980. We further note that the petitioner's passport identifies her as an "engineer."

The petitioner discusses her work:

> During my PhD career, I participated in the study of prostate cancer for three years. . . . Our results not only confirmed other researchers' previous discoveries, but also pointed several potential new directions in identifying new therapy target (e.g. Fibroblast Growth Factor axis). In addition, we studied the signal transductions in prostate cancer cells and the synergistic effect of different growth factors on the fate of these cancer cells. The discovery we made supports a newly raised theory that the abundance of IRS-1, a cell messenger protein, may dictate cell fate, including the possibility that too much IRS-1 in cells will lead to uncontrolled cell growth and cancer like phenotype. The mechanisms of the regulation of IRS-1 were elegantly examined and two new independent mechanisms were successfully identified by us. One of them (calpain-mediated regulation) indicated IRS-1 may also be involved in Alzheimer's disease.
>
> My current postdoctoral projects at the Wistar Institute are to reveal the code of CD44 in cancer development, growth, progression and metastasis. CD44 is a cell surface protein. It has been demonstrated that CD44 facilitates the development of many diseases such as arthritis, atherosclerosis and cancer. Its essential role has been particularly emphasized in cancer metastasis. Researchers found that putting specific forms of CD44 alone into certain cells is enough to make them become metastatic in animal models. Our current academic goal is to determine if CD44 on local tissues (instead of CD44 on tumor cells) also contribute to tumor growth, migration and invasion. . . . Our preliminary data suggest that the host CD44

may actively participate in the support of cancer cell growth and angiogenesis after their invasion into healthy lung tissues.

The petitioner submits letters from five witnesses. One of the witnesses, Dr. [redacted] who has "known [the petitioner] for more than eight years," is a polymer chemist who claims no expertise in the petitioner's area of research.

All of the remaining witnesses are on the faculty of the Medical College of Philadelphia-Hahnemann University (MCP-Hahnemann), or at least were on that faculty while the petitioner was a student there. Dr. [redacted] Sell, now an associate investigator at Lankenau Institute for Medical Research, states that the petitioner "performed her thesis research in my laboratory. . . . [The petitioner] has performed outstanding research. Her work has led to the development of new concepts in the area of cellular growth control and cancer." Professor [redacted] states that the petitioner "impressed me about her profound knowledge in basic biochemical sciences. She demonstrated her extraordinary ability in biomedical field." Professor [redacted] states that the petitioner "is an extremely bright and motivated individual" who "has done a lot of important studies in determining the molecular pathogenesis and mechanisms of IGF-I regulated growth in prostate tumor lines." Professor [redacted] director of the Program of Cancer Genetics at MCP-Hahnemann's Biochemistry Department, states that the petitioner "investigated the cellular senescence in human fibroblast cells and signal transduction of IGF-I in human prostate cancer cells. In both areas she has made important discoveries."

The petitioner submits copies of her published articles, and documentation showing that one of those articles has been cited eight times; a second has been cited once.

The director denied the petition, stating that the record does not demonstrate that the petitioner's work has stood out in the field to a degree sufficient to warrant the special benefit of a national interest waiver. The director noted that all of the witnesses who work in the petitioner's field have worked with her directly. In denying the petition, the director concluded that the petitioner has not shown that her work is national in scope. Medical and scientific research at major institutions is inherently national in scope, however, because the results are disseminated nationally (and internationally) through publications and conferences and because the findings of such research tend to apply universally rather than only locally. We therefore withdraw the director's finding that the petitioner's work lacks national scope.

On appeal, the petitioner submits a copy of previously submitted article published in 2000. The petitioner has highlighted various section headings, as well as a sentence that reads: "These results imply that IRS-1 is targeted to the proteasome upon exposure to IGF-I." Given that this article was already in the record, its resubmission on appeal adds nothing of substance to the record.

The petitioner also submits a copy of *Cell Cycle Control and Dysregulation Protocols*, a volume in the "Methods in Molecular Biology" series; the petitioner is a co-author of two chapters in the book. The petitioner states that the book shows that she developed a research protocol that "has been established as the standard protocol for other biomedical scientists to follow." The petitioner submits no independent evidence to show that protocols published in "Methods in Molecular Biology" are routinely adopted throughout the field.

Furthermore, the book has a 2004 copyright date, and thus it did not exist in May 2003 when the petitioner filed the petition. A petitioner must establish eligibility at the time of filing; subsequent developments cannot cause eligibility where it did not already obtain. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm.

1971). The list of contributors indicates that the petitioner works at the Lankenau Institute for Medical Research, having evidently left the Wistar Institute. The list identifies 40 contributors, all but four of whom are located in only three areas (Philadelphia/Wynnewood, Pennsylvania; Worcester, Massachusetts; and Bologna, Italy).

The petitioner states that she has "demonstrated I have made contribution[s] to the biomedical research field above and beyond the capabilities of most of the trained professionals in my field." The record contains no objective, documentary evidence to substantiate this claim. That the petitioner has co-authored published articles would be a significant factor if the petitioner had shown that publication is rare in her field, but there is no evidence that such is the case.[1]

The petitioner has not demonstrated that her research has attracted significant attention outside of the Philadelphia area. Every institution where she has worked in the United States is in or near Philadelphia; all of her witnesses are or were on the faculty of the Philadelphia university where she studied; even the editors of *Cell Cycle Control and Dysregulation Protocols* are both on the faculties of universities in Philadelphia.

The petitioner has shown that her colleagues in the Philadelphia area consider her to be a talented and competent scientist, but there is no persuasive evidence that the petitioner's work has had a larger impact. The petitioner filed this petition at a very early stage in her career, and the petition appears, at best, to have been filed prematurely.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.

---

[1] We note that the Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition is the assertion that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization of prestigious universities takes it as "expected" for a postdoctoral researcher to publish his or her work.